

Approved:

Attach A

Attest: \_\_\_\_\_  
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Mayor and Council Meeting  
January 9, 2012  
Meeting No. 01-12  
7:00 p.m.

Present:

Mayor Phyllis Marcuccio and Councilmembers John F. Hall, Jr., Tom Moore, Bridget Donnell Newton and Mark Pierzchala.

Staff Present:

Acting City Manager Jenny Kimball, Acting City Clerk Brenda Bean and City Attorney Debra Daniel.

**1. Convene**

The Mayor and Council met on January 9, 2012, in Mayor and Council Chambers, Rockville City Hall, 111 Maryland Avenue, Rockville, Maryland 20850.

**2. Pledge of Allegiance**

Mayor Marcuccio led the Pledge of Allegiance.

**3. Agenda Review**

Acting City Clerk Brenda Bean reported that there were no changes to the agenda.

**4. City Manager's Report**

Acting City Manager Kimball welcomed and introduced Montgomery County Public School System (MCPS) guests: Dr. Joshua Starr, Superintendent, Shirley Brandman, Board of Education President, and Laura Berthiaume, Board of Education Member. Ms Kimball offered them the opportunity to briefly comment on their discussions earlier this evening with the Mayor and City Council.

Mayor Marcuccio welcomed the MCPS members and thanked them for taking the time to meet with the Mayor and Council.

Ms. Brandman expressed the importance of keeping channels of communication open between MCPS and the Mayor and Council and emphasized the important work derived from the Memorandum of Understanding.

Ms. Berthiaume thanked the Mayor and Council the opportunity for both bodies to get to know one another. She expressed enthusiasm on the collaboration on school construction funding to address the issue of over-crowding in Rockville schools and also highlighted common ground to advocate at the county and state levels for fundings. Our goal is to give students the schools they deserve.

Dr. Starr gave the following overview:

Montgomery County continues to grow with approximately 2,400 new students each year. Currently MCPS enrolls 146,497 students. MCPS has almost 9,000 more students today than in 2007. MCPS is projecting another 9,500 new students by 2017. The City of Rockville is experiencing large enrollments at Richard Montgomery High School and at the elementary level. These numbers make it extremely challenging for MCPS to provide school capacity. He said he fully understands the enrollment needs in Rockville and is willing to meet those needs; may need to reorganize some priorities. Dr. Starr also spoke about the Board's adopted six year capital improvements program.

Councilmember Pierzchala thanked the MCPS representatives for coming and said that the Mayor and Council are fully committed to supporting MCPS. Mayor Marcuccio again thanked the MCPS representatives for their presence and pledged to work together to prepare world class students.

Ms. Kimball concluded the City Manager's report by providing the Mayor and Council with the 2013 Budget Preparation Schedule.

## **5. Town Center Update**

Ms. Kimball reported that VisArts and Federal Realty are sponsoring a Lunar New Year celebration with a parade through Town Square and an outdoor Asian market.

## **6. Citizens' Forum**

<b><i>Citizen</i></b>	<b><i>Issue</i></b>
Dr. Banda	Support for Swim Center Improvements
Jack Gelin	Opposes Lutheran Home Bond
Joe Jordan	Opposes Lutheran Home Bond
Drew Powell	Opposes Lutheran Home Bond
Peter Mork	Process of appointments for Boards and Commissions
W. Thomas Curtis	Hold off on decision for the Lutheran Home Bond issue
Phil Bowen	Opposes the Pumphrey's Funeral Home parking lot expansion

Thomas Weko	Supports the Pumphrey's Funeral Home parking lot expansion
Linda Burnett	Supports Text Amendment to reverse earlier decision on Pumphrey's Funeral Home parking lot expansion
Alice Von Saunder	Opposes the Lutheran Home Bond.
Lynn Wagman	Opposes Lutheran Home Bond; proposed parking lot at Pumphrey's too big
Roald Shrack	Kudos to Public Works staff for prompt response in repairing a leak on Farsta Court; supports the Lutheran Home Bond
Margaret Hadley	Opposes the Pumphrey's Funeral Home Text Amendment
Chip Boyland	Thanked the Mayor and Council and the Public Works Department for efforts on Fall leaf pick up
Larry Bradshaw	CEO of National Lutheran Home. Supports the Bond
Bob Harris, Esquire	Seeks City's participation in Silverwood appeals
Christina Ginsberg	Opposes the Lutheran Home Bond and the process
Frank McGovern	Executive Director at the Village at Rockville; introduced residents of the facility; supports Lutheran Home Bond
Susan Prince	Opposition to Pumphrey's parking lot
Soo Lee Cho, Esquire	Supports Pumphrey's Text Amendment City set up its parking regulations. It preexisted the zoning ordinance.
Dave Thomas	Format of citizens forum
Courtney (last name not audible)	Director of Community Activities of the Village at Rockville. Applying for bond financing to better serve the seniors Supports Lutheran Home Bond
Vicki McMullen	Pumphrey's Text Amendment
Stuart Crump	Resident of National Lutheran Home; in favor of Bond financing
Don Hadley	Planning Commission Member - Current ordinance dodges the bullet.

Mike Bray

CEO of National Lutheran Home. Supports Lutheran Home Bond

**7. Mayor and Council's Response to Citizens' Forum and Announcement.**

The following members of the Mayor and Council responded to remarks made during Citizens' Forum: Mayor Marcuccio and Councilmembers Hall, Moore, Newton and Pierzchala.

**8. Appointments & Announcement of Vacancies**

**Motion:** to appoint Audrey Beck and Noreen Stovall as members to the Senior Citizens Commission until January 1, 2014.

Moved by Councilmember Newton, seconded by Councilmember Hall and unanimously approved.

Mayor Marcuccio reported on the current vacancies to City Boards and Commission.

**9. Consent Agenda**

**A Rejection of Bids - IFB #18-12 for Rockville Swim and Fitness Center Outdoor Bathhouse Renovation**

**B. Authorization to Extinguish and Abandon a Sewer Main Easement at Montgomery College.**

Councilmember Newton requested removal of both items A and B.

**Re: Authorization to Extinguish and Abandon a Sewer Main Easement at Montgomery College.**

There was discussion on location of the subject easement located at Montgomery College. Councilmember Newton wanted to be sure that the City is protected and that this would not be a problem for users north of the college. Craig Simoneau, Director of Mr. Simoneau responded that the City no longer requires this easement since the sewer only serves Montgomery College and no other properties. He said we are not removing the line but turning it over to the college to maintain and operate.

**Motion:** to authorize staff to extinguish and abandon a sewer main easement at Montgomery College

Moved by Councilmember Hall, seconded by Councilmember Newton and unanimously passed.

**Re: Rejection of Bids - IFB #18-12 for Rockville Swim and Fitness Center Outdoor Bathhouse Renovation.**

Councilmember Newton said that the Mayor and Council approved funding for this a year ago and would like for this project to be a priority. Councilmember Moore asked why the bids were closing now and Mr. Hall responded that the performance by the design and architectural team was sub-par.

**Motion:** to reject Bids IFB318-12 for Rockville Swim and Fitness Center Outdoor Bathhouse Renovation.

Moved by Councilmember Pierzchala, seconded by Councilmember Newton and unanimously approved.

## 10. Approval – Financial Management Policies

Director of Finance Cohen presented the staff report, stating that the City's Financial Management Policies serve as the foundation for our organization to achieve long-term financial stability, sound internal controls, regulatory compliance, and stakeholder confidence in the City's management of its financial affairs. Mayor Marcuccio recommended that the Economic Development Bond Policy be separate from the Financial Management Policy and all agreed. Mr. Cohen introduced Jim Cumbie, Esquire the City's bond counsel who provided additional information and background:

Ensuing discussion between the Mayor and Council and staff included:

- the role of the underwriter
- policy is similar to the County's – what has been their experience
- independent evaluation to ensure financial stability
- criteria (restrictive language vs. vague language)
- support nonprofits instead of discouraging them
- is this a new trend
- has the City ever ended up incurring costs
- size of various transactions that Mr. Cumbie has been involved in
- zero impact to municipality bond rating if defaulted
- impacts to city's bond capacity through the issuance of serial conduit bonds
- need for a public hearing
- timeframe for approval
- National Lutheran Home deadline
- possibility of indemnification and religious nature of borrower

**Motion:** to hold a public hearing on January 23, 2012, to discuss the Draft Economic Development Bond Policy.

Moved by Councilmember Newton, seconded by Councilmember Hall with Mayor Marcuccio and Councilmembers Hall, Moore and Newton approving and Councilmembers Moore and Pierzchala opposing.

Motion Passed: 3 approved - 2 opposed - 0 abstained

## 11. Approval - Proposed Economic Development Revenue Bond Financing for National Lutheran Home and Village at 9701 Veirs Drive, Rockville

Councilmember Hall said he will not support adopting the policy tonight and is in favor of holding a public hearing on January 23rd. He said we need a policy and would like to do it the right way over time. He also wants to be sure that all items regarding tonight's discussion be incorporated into the document. Mr. Hall said that there is a public purpose advanced by this application.

The National Lutheran Home is a charitable organization serving the community well. He voted to approve the bond financing and is hopeful that the development of a better policy is the end result.

Councilmember Pierzchala sees no risk to the City and sees an opportunity for a wonderful non-profit organization of the City to benefit from this. He said there is no reason not to go ahead with this.

Councilmember Newton would like to find a way for buyers to indemnify the City to ensure that no one can come after the City in any way. Councilmember Newton is concerned that we don't have the financial background to ask the good questions; to dig deep. She will vote against it because she does not want to vote on something where she does not have all the facts.

Mayor Marcuccio said that she cannot vote for this before a Policy is in place.

Councilmember Moore believes that the Mayor and Council have been well represented during the process and is happy with the information he received. He is pleased that it will pass with three votes of the council that will get the project passed, while also standing on good principal as well.

**Motion** to approve proposed Economic Development Revenue Bond financing for National Lutheran Home and Village at 9701 Veirs Drive, Rockville.

Moved by Councilmember Tom Moore, seconded by Councilmember Mark Pierzchala with Councilmembers Moore, Pierzchala and Hall approving and Mayor Marcuccio and Councilmember Newton opposing.

Motion Passed: 3 approved - 2 opposed - 0 abstained

**Motion:** to approve the Economic Development Revenue Bonds Policy and Criteria as amended by discussion this evening with the exception of the requirement for a financial advisor.

## 12. Discussion and Instructions Silverwood Annexation and Proposed Development

City Attorney Debra Daniel provided the background. Councilmember Hall said that he disagrees with the changes that were made to APFS to accommodate this particular development and is hopeful that the Court will clarify that the APFS was incorrect. Mayor Marcuccio said that she thought the Planning Board voted against it. Councilmember Moore said that the City Attorney has a duty to defend the City. He said it is bad policy to consider not defending our fellow citizens who put so much time and effort into their decisions.

**Motion:** to instruct the City Attorney to fully participate in cases to defend the interest of the City.

Moved by Councilmember Pierzchala, seconded by Councilmember Moore with Councilmembers Hall, Moore, Newton and Pierzchala approving and Mayor Marcuccio opposing.

## 13. Discussion - Regarding Pumphrey's Funeral Home Parking Expansion and Previously Approved Text Amendment (TXT2010-00228).

Councilmember Moore – Does not want to revisit the issue because no errors were made by the previous council, procedurally or legally.

Councilmember Hall - None of the reviewing or advisory bodies charged with assessing this application saw fit to endorse it. The law says you do not expand nonconforming uses. He supports instituting a new text amendment that would undo this. Would like to return to the principle of sound policies on land use consistent with decades of municipal government.

Mayor Marcuccio - If Pumphrey's were to go away, that site would permit something much larger than what is there. Not possible to do this without changing that non-conforming use. Why wasn't it made one lot early on? Agrees the appropriate thing to do is to reverse the text amendment. This is not a practical solution to a historic district property.

Councilmember Newton - . The no right turn on Williams Street has created a major cut through. Pumphrey's has been a great neighbor and why intermediate resolutions were not explored before this action. Does not want to necessarily wish to overturn something approved by the prior council but believes the law states you can't take a nonconforming use and expand on the area where it is located.

Councilmember Pierzchala – Voted to approve this. It was not a mistake. He asked for clarification of the term "expansion of nonconforming use." Ms. Debra Daniel responded it could be considered alteration or enlargement and still be permitted.

Councilmember Moore – Was not on the Council that approved this item but is a resident in the West End. Supported this as a resident. It all comes down to pedestrian safety. He noted that cars park in front of his house for funerals at Pumphrey's quite often. Does not mind that but does mind that they have to cross a busy state road to get to the building.

**Motion:** to direct staff to come back with a text amendment that reverses the previous decision by deleting the language contained in 25.08.05(d).

Moved by Councilmember Newton, seconded by Councilmember Hall.

In discussion, Councilmember Moore said the vote here was to reverse because you did not like that way it went last time. Councilmember Newton said that this decision went against every recommendation by other boards and commissions. Councilmember Hall said that the decision was not made in conformance with policies of the City.

The motion carried with Mayor Marcuccio and Councilmembers Hall and Newton approving and Councilmembers Moore and Pierzchala opposing.

**14. Discussion and Instructions - Zoning Text Amendment TXT2012-00231, Revisions to the definition of "Family"; Mayor and Council of Rockville, applicants Discussion and Instruction revisions to definition of family.**

Chief Planner Jim Wasilak presented the background on this item. Councilmember Moore said that this clears things up in a nice, clean way and should aid the problem occurring in neighborhoods with lots of unrelated people living in a single family dwelling. He applauded staff for their efforts and said that this document will help to combat the situation.

**Motion:** to proceed with Zoning Text Amendment TXT2012-00231, Revisions to the definition of "Family."

Moved by Councilmember Newton, seconded by Councilmember Hall and unanimously approved.

#### **15. Review and Comment - Future Agendas**

- Add a public hearing on Policies and Procedures for Bonds for the meeting on January 23, 2012.
- Add meeting with City Manager Search Firm, Springsted, for the meeting on January 18, 2012.
- Add an Executive Session before the meeting on January 23, 2012.

#### **16. Review and Comment - Action Report**

Acting City Manager Jenny Kimball said that she would follow up on the items that have due dates of January 5th. Councilmember Moore thanked Ms. Kimball for the new format of the Action Report and said that it really helps with the readability.

#### **17. Mayor and Council Liaisons to Boards and Commissions Report**

No reports were given.

#### **18. Old /New Business**

Councilmember Moore congratulated City Attorney Daniel and her staff on the Victory Housing Ruling. Councilmember Pierzchala noted that the RedGate Golf Course was now under the control of Billy Casper and thanked the City staff for excellent execution in getting the lease finalized. Councilmember Newton commented on the grand opening of the ice rink in Town Square. She said it was an amazing event and was surprised that Rockville 11 was not there to cover it. She does not believe that just because it is not a City of Rockville event that we should not participate. It would behoove us to participate in FRIT activities and events in any way that we can. Councilmember Moore mentioned the number of recent requests to rename the Senior Center after former Mayor William B. Hanna, Jr. and wondered if there might soon be a discussion. Ms. Kimball responded that the Rockville Seniors Inc. would take it up at their next meeting and would have a recommendation ready for the Mayor and Council meeting on January 23. Mayor Marcuccio said that she would soon be finalizing the Council Liaison List for the Boards and Commissions. She also mentioned that she would like to convene a Charter Review Commission and asked each councilmember to start thinking about names to serve on the Commission.

#### **19. Adjournment**

There being no further business, the meeting adjourned at 1:00 a.m. on January 10, 2012.

**Motion:** to adjourn.



Moved by Councilmember Hall, seconded by Councilmember Moore and unanimously approved.